



Business Advisory Council

Wednesday, September 26, 2012 10:00 am – 12:00 pm
Washington State Liquor Control Board (WSLCB)
3000 Pacific Avenue SE
Olympia, WA 98501
Conference Room 201

Business Advisory Council Meeting in Attendees:

<p>Council Members: (Refer to sign-in sheet)</p>	<p>Liquor Control Board: Sharon Foster, Board Chair Ruthann Kurose, Board Member Chris Marr, Board Member, BAC Liaison Pat Kohler, Administrative Director Rick Garza, Deputy Administrative Director Justin Nordhorn, Education and Enforcement Director Alan Rathbun, Licensing Director Brian Smith, Communications Director Patrick Woods, Licensing Education and Outreach Manager Karen McCall, Rules Coordinator/Senior Policy Analyst Eddie Cantu, Licensing Manager Beth Lehman, Licensing Customer Service Manager Jason Lewis, Strategic Program Analyst Samantha Trotter, Confidential Secretary to the Board Mary Tennyson, Senior Assistant Attorney General</p>
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Welcome and Introductions

Chris Marr, WSLCB Board Member and BAC Liaison

Chris Marr, Board Member of the Liquor Control Board and BAC Liaison welcomed the members of the Business Advisory Council (BAC) and other guests. Board Chair Sharon Foster and Board Member Ruthann Kurose were also in attendance. Approximately two attendees participated via conference call.

WSLCB Transitions

Pat Kohler, WSLCB Administrative Director

Pat gave a PowerPoint presentation to the group (see attached) regarding the LCB's new mission and priorities, post-1183. Per Pat, the agency lost over 1,000 FTEs due to the initiative.

Approximately 243 FTEs remain in the new organizational structure. In response to the rapidly changing liquor business in Washington, the LCB is seeking statute changes to make the agency more flexible and responsive to various stakeholder business models. In support of this goal, several LCB employees are undergoing Lean Six Sigma training through UW-Tacoma/Key Bank Development. Ultimately, the aim of Lean Six Sigma is to provide the customer with what they need, at a faster rate and with higher quality. An education unit has been created in the Licensing division, under the direction of Patrick Woods. Upcoming BAC meetings will feature more detail on Patrick's group, and other developments within Licensing. Pat noted that Initiative 1183 did not direct more funding to be provided to the Enforcement division, to account for the increase in licensees. Currently there are 290 licensees for every one Enforcement officer. To accommodate the additional output, the agency has formulated a decision package specific to the Enforcement division. More detail on the decision package is provided below.

Policy Legislation, Budget Request

Rick Garza, WSLCB Deputy Administrative Director

Justin Nordhorn, Chief of WSLCB Education and Enforcement

Rick provided an overview to attendees of the 2013 Agency Request Legislation (see handout attached), which consists of two items. First, a new section in RCW 66.28 aims at providing exceptions to tied-house. Per Rick, every year stakeholders go to the Legislature to request exceptions to tied-house laws, frequently regarding money or money's worth issues. The new section would give the Board authority to approve exceptions to tied-house under certain conditions. These include: similar exceptions already granted, exception will not impact public safety, and exception will not increase youth access to alcohol. The second request legislation item revises the snack bar liquor license allowed via RCW 66.24.350. The revision would enable snack bar liquor licensees to sell wine for on-premise consumption, where currently they are only able to offer beer by the can or bottle.

Chief of Education and Enforcement Justin Nordhorn briefed the group on the decision package aimed at addressing shortfalls within the division, post-1183. As noted previously, no earmarked funds or staffing increase were included in 1183, to assist with the increase in licensees June 1, 2012, and beyond. Justin explained that the Education and Enforcement division was down approximately 15% in officer staffing, with an increase in retail licensees of 23%. Per Justin, the division is unable to act as proactively as they'd like, given the lack of resources, and is instead operating more responsively. The decision package spans a three biennium period, with 3.2 million requested for the 2013-2015 biennium.

Litigation Update

Mary Tennyson, Senior Assistant Attorney General

Rick Garza, WSLCB Deputy Administrative Director

Senior Assistant Attorney General Mary Tennyson outlined the lawsuits filed against the LCB based on some of the rules adopted during implementation of I-1183. Washington Restaurant Association (WRA), Northwest Grocery Association (NWGA), and Costco are petitioners in a case challenging some of the rules adopted in June and August. At this point, the two cases (same petitioners in both) have been consolidated, Washington Beer and Wine Distributors have

intervened, and discovery is ongoing. Per Mary, briefing begins in November of this year, and a hearing is scheduled on February 1, 2013. The main challenges include: procedural challenges to all the rules, challenge to adopting the 24 liter per day limit on retail to retail sales for both wine and spirits, the way the spirits COA was defined, authority of spirits importers, the rule requiring spirits distributors and wine distributors to sell and deliver from their licensed location, and challenges to who is eligible to obtain the retailer reseller endorsements to sell spirits and wine to retailers.

Mary noted that there are also a couple of lawsuits filed by landlords, challenging the termination of state store leases. At this point, discovery is ongoing.

Tribal Fee Update

Rick Garza, WSLCB Deputy Administrative Director

Rick explained to attendees the process for determining how the fees in I-1183 applied to Tribal entities (see Q and A handout attached). Rick noted that 14 Tribes held contracts with the state prior to 1183. In working with the Governor's office, and the office of the Attorney General, it became clear that it would be difficult for the LCB to enforce any portion of the fees required by 1183 not pertaining to regulatory and costs. Per discussion at the July 13, 2012 Tribal Advisory Council meeting, Tribal entities and the LCB agreed to use a Memorandum of Agreement (MOA) to document that in lieu of the 17% fee, Tribes would pay a regulatory license fee instead. This fee amounts to \$1644 per year (as compared to \$166 for a standard retail license fee), and may be re-negotiated in the future, based on fluctuation of regulatory costs. Mary Tennyson noted that, based on federal precedent, tribes may not have a fee or tax imposed upon them, unless it has a regulatory purpose. Chairs of the fiscal and policy committees in the Senate and House were briefed prior to finalizing the MOAs.

Current Rulemaking

Karen McCall, WSLCB Rules Coordinator

Karen walked the group through the rulemaking calendar for the next three months (see handout attached). The items noted in red are tentative, per Karen, and as such are not guaranteed to occur on the date listed. Stakeholders may visit the LCB website to get more information on proposed rules, recently adopted rules, and the rulemaking schedule (<http://www.liq.wa.gov/laws/laws-and-rules>).

Looking Ahead: Trade Area, Liquor Pricing, I-502

Rick Garza, WSLCB Deputy Administrative Director

Trade Area: Per Initiative 1183, the Board is tasked with defining trade area. Rick noted that staff has plans to provide proposed definition language to stakeholders within the next month. Stakeholders will be asked for input on the proposed definition before bringing the CR 102 to the Board for approval.

Liquor Pricing: Rick gave the group an overview of a current liquor pricing issue under examination (see Family Plans handout attached). While the LCB removed the ban on volume discounting, meaning distributors and suppliers can provide pricing at different volumes,

potential concern surrounds the idea that a retailer may be required to purchase a particular portfolio of products from the distributor or supplier, in order to obtain lower prices. Staff is working on an industry advisory to provide further information to stakeholders.

Initiative 502: Rick briefly touched on Initiative 502, which would license and regulate marijuana production, distribution and possession for persons over the age of twenty-one. Interested attendees were encouraged to go to the Office of Financial Management (OFM) website, where the fiscal note for the initiative has been posted (http://www.ofm.wa.gov/initiatives/2012/502_fiscal_impact.pdf). Funds were included in the initiative language for the Board to provide licensure and enforcement. Should the initiative pass, Rick noted that it would likely be challenged, as it appears to violate Federal law.

BAC Member Roundtable and Q&A

All Attendees

Attendees were invited to ask questions or bring up items of interest, including potential plans for the upcoming Legislative session. Topics highlighted by attendees included:

- Paul Beveridge, Family Wineries – Tied-house and licensing reform.
- Stephenie Shah, Diageo – Pricing of spirits.
- John Guadnola, Washington Beer and Wine Distributors – Defense of rules challenged by WRA, NWGA and Costco. Also, likely challenge of \$150 million distributor fee.
- Adam Smith, Discus – Tax and fee burden, sales point structure, also looking to reenact program for off-premise tastings.
- Julia Clark, WRA – Considering the 24 liter/day issue, 17% fee for sales for resale, central warehousing and cooperatives, potential legislation around microbreweries and allowing retail locations, and allowing credit terms for the retail sector.
- Susan Johnson, Stoel Rives LLP – Cinemas.
- Theresa Hancock, Independent Retail Liquor Store Manager – Trade area, 17% retail to retail, not in support of changing the 24 liter temporal limit, tax license fee high given her business model, and pricing and supply.
- Jan Gee, Washington Food Industry Association (WFIA) – Delivery of product to more rural areas, consolidation of payment of 17% licensing fee to DOR on LCB form, trade area, 10,000 square foot requirement.
- Jean Leonard, Washington Wine Institute – Special occasion license.
- Cindy Zehnder, Total Wine and More – Spirits sampling, more selections for wine tastings.
- Lynn Omlie, Discus – Echoed Adam Smith’s comments, working closely with LCB’s Jason Lewis to assist with streamlining licensure practices, etc.

Closing Comments, Next Meeting

Chris Marr, WSLCB Board Member and BAC Liaison

Board Member and BAC Liaison Marr closed the meeting by thanking attendees for their participation, and noting that the next BAC meeting (date not yet confirmed), will be scheduled for the middle of the 2013 legislative session and will likely include more information on spirits revenue figures, the LCB’s Education and Enforcement division, the new Licensing Education unit, and I-502 and legal issues.

Meeting adjourned at 11:55 a.m.

Handouts:

1. Liquor Control Board Transition (PowerPoint)
2. 2013 Agency Request Legislation
3. Tribal Retail Liquor Sales – Questions and Answers
4. Rulemaking Schedule 2012
5. Review of Family Plans